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Introduction

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INTRODUCTION

The Third Baron de Hirsch Meyer Lecture Series is a symposium in tribute to the foremost benefactor of the University of Miami School of Law. On February 2, 1978, two eminent jurists and a distinguished professor of constitutional law gathered to discuss the philosophical, social and legal implications of the use of litigation to solve social problems in a pluralist democracy.

The keynote address was delivered by the Honorable William H. Rehnquist, Associate Justice of the Supreme Court of the United States. A prolific writer of opinions and articles concerning judicial activism, Mr. Justice Rehnquist's presentation revealed a complexity in his judicial philosophy. While he formerly may have been perceived as a jurisprudential positivist, the Justice espoused a normative political theory based upon the protection of traditional institutional values.

Senior Circuit Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit analyzed the issue of activism in terms of the appropriate occasions for judicial policymaking. Though not objecting to courts deciding issues of social policy, he requested courts, whenever possible, to rest their decisions on an ascertainable jural principle rather than on their private conception of social policy. Judge Friendly encouraged courts and judges to observe procedural fairness in the introduction of social data and to rely only on proven and accurate data when they intend to use such information as the basis of their decision.

Professor Laurence H. Tribe of Harvard University responded to Justice Rehnquist's keynote address. As a writer of both numerous law review articles and a recent treatise of American constitutional law, Professor Tribe has openly voiced his criticism of the retreat by the Supreme Court from an appropriate defense of human rights and needs. Believing that judicial restraint inescapably involves taking sides, Professor Tribe attacked the present Court for relying on seven pluralist fallacies in its deferral to well-established interest groups and advocated a candid judicial activism to ensure protection of groups not yet assimilated into the government coalition.